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RECENT CASES.

BANKRUPTCY—EQUITABLE DEBTS—WIFE'S CLAIM FOR MONEY LOANED—*IN RE TALBOT*, 7 Am. B. R. 29 (Mass.).—A wife's claim for money advanced to her husband from her separate estate as a loan, cannot be enforced in Massachusetts by either legal or equitable proceedings and so cannot be proved against the husband's estate in bankruptcy.

The rule in most of the United States and in England is that a wife may become a creditor of her husband and enforce the contract in equity. *Story, Eq. Jur.*, sec. 1373; *Lehr v. Beaver*, 8 W. & S. 102. In Massachusetts, however, the court holds that, since the contract of husband and wife is void at law, it would be contrary to the public policy of the commonwealth to enforce the liability in equity. *Foote v. Torrey*, 135 Mass. 87; *Woodward v. Spurr*, 141 Mass. 283; 6 N. E. 251; *Bank v. Tyndale*, 176 Mass. 547; 57 N. E. 622, 51 L. R. A. 447. And since the provability of a claim depends upon its validity in the State where it arises, *Fleitas v. Richardson*, 147 U. S. 550, the court refused to uphold the claim. This decision directly overrules the former decision of the same court in *Re Blandin*, 1 Low. 544, which involved the same point, and held that a loan made by a wife to her husband was enforceable by equitable proceedings and provable against the estate in bankruptcy. All the cases involving similar claims have held, in accordance with the laws of the States, that such a liability as this is enforceable in bankruptcy proceedings. *Sigsby v. Willis*, 3 Ben. 371; *In re Bigelow*, 2 N. B. R. 170; *In re Novak*, 101 Fed. 800; *Blumberg v. Bryan*, 107 Fed. 673 (C. C. A.); *In re Abraham*, 35 C. C. A. 592; *In re Neiman*, 6 Am. B. R. 329.

BANKRUPTCY—PROPERTY SEIZED UNDER WARRANT—THIRD PERSON'S CLAIM OF TITLE—PROCEDURE—*IN RE YOUNG*, 7 Am. B. R. 14 (C. C. A.).—A bankrupt had mortgaged his property some time prior to his involuntary petition in bankruptcy, at a time when his creditors claimed he was insolvent, and that the mortgage operated as a preference. The bankrupt remained in the possession of the property, and under a warrant the marshal took possession of such property. Subsequently the petitioner appeared and moved that the property be surrendered to him by the marshal, under claim of mortgage title. The motion was resisted by the bankrupt's creditors, and the District Court overruled the motion, without prejudice to the petitioner's right to bring an action for the recovery of the property in any court of competent jurisdiction. The Circuit Court of Appeals affirmed the decision.

Prior to the decision in *Bryan v. Bernheimer*, 181 U. S. 188, there had been some dispute as to the right of marshals to seize property of the bankrupt in the hands of third persons when absolutely necessary. *In re Ward*, 104 Fed. 985, held that a court of bankruptcy could not take property alleged to belong to a bankrupt, out of the hands of third persons. But *Bryan v. Bernheimer*, construing the same point, authoritatively held that the marshal could take possession of the property of a bankrupt in the hands of third